

Oversight file

HR 95-716

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Comm. Reform

during which the Democratic caucus and the Republican conference could elect the House leadership, and make their committee assignments. The House could then not only adopt its rules and elect its officers, but could also elect its committees when it first met. Perhaps the committees could be required to organize themselves for business within a given time.

Provisions for the early organization of the House are set forth in section 401 of the select committee resolution. They authorize the majority and minority leaders after consultation with the Speaker in any even-numbered year to call a caucus or conference during the interval between November 15 and December 20. Members-elect as well as reelected Members would be asked to attend. The business of each party at the caucus or conference would be primarily to choose its leaders and committee members.

This proposal alone could advance the legislative work of the House in the first session of each Congress by one to three months. It should allow more time for legislative action and oversight activities, improve the quality of legislation, and help Congress regain its historical control over the programs and operations of the Federal Government.

IV. INTELLIGENCE AND OTHER NATIONAL SECURITY INFORMATION

During its deliberations, the select committee discussed how the role of the Foreign Affairs Committee in the field of intelligence should be enhanced. The question was raised because of the growing importance of economic and political information in supplementing military information as a factor in foreign policy and national security. This concern for all aspects of information seemed to involve in a very central way the effective performance of the strengthened Foreign Affairs Committee proposed by the select committee.

Also, during its deliberations, the select committee discussed the need for the Science and Technology Committee to have an overview of military research and development if it was to make broad national policy in its field of primary jurisdiction when the largest single component of Federal R & D was conducted for the Department of Defense.

In both cases, an issue closely related was that of protection of national security classified information, whether intelligence from abroad or internally generated.

Intelligence

While the select committee did not doubt the appropriateness of having a number of House committees continue to be responsible for both legislation and oversight of those departmentally-related intelligence activities within their present jurisdictions (such as the Department of Defense for the Armed Services Committee, Department of State for the Foreign Affairs Committee, Department of

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Justice for the Judiciary Committee, etc.) there was some question as to whether any single existing committee should have exclusive jurisdiction either over the Central Intelligence Agency, which lies outside any cabinet department and is responsive to the National Security Council in the Executive Office of the President, or over the coordination of all intelligence activities, the responsibility of the Director of Central Intelligence.

Apparently, small subcommittees in the Committee on Armed Services and in the Committee on Appropriations which have dealt with intelligence matters have been responsible for such overall coordination of intelligence policy as is made in the House of Representatives. Thought was given to mandating a similar subcommittee in the Committee on Foreign Affairs to work closely with the other two subcommittees. In the end, though believing it desirable for Foreign Affairs to establish such a subcommittee, the select committee stopped short of making a recommendation to this effect because of a reluctance to interfere with the internal organization of committees. It recommended only that the legislative responsibility presently held by the Armed Services Committee be left there intact, while an overview authority over foreign and military intelligence (without added legislative authority beyond that which already exists over the State Department) should be assigned to the Foreign Affairs Committee. This arrangement was in effect the mirror image of the overview of arms control and disarmament extended to the Armed Forces Committee, leaving exclusive legislative authority in that field to the Foreign Affairs Committee. In each field, proposals for concurrent legislative as well as oversight jurisdiction were rejected. The select committee does not dispute that the Armed Services Committee and the Foreign Affairs Committee can each have a vital interest in both information and policy related to intelligence and to arms control, topics which themselves are intertwined. But recommending only oversight or overview as the immediate means for coordination seemed to involve some lesser risks of delay, indecision, deadlock, and rivalry between the two committees than would a complete sharing of legislative jurisdiction.

Defense Secrets

There seemed less reason to involve the Committee on Science and Technology in legislating on matters related to military research and development, as this responsibility was clearly appropriate to the Committee on Armed Services. But because such a large proportion of the total national expenditures for R & D are military and these have implications for technology transfer into the civilian economy and because the Department of Defense contracts for such a heavy percentage of total national scientific and technical manpower, some overview seemed essential to any rational national policy. This oversight was written into the select committee's recommendations on the Committee on Science and Technology.

Protection of National Defense S

It is worth noting that some, especially concerned about the unusually sensitive kinds of information those related to our own new technologies, special sources, codes, and identities under special safeguards of law, concern did not relate to whether of sensitive information than at that secrets are more likely to be the smallest possible number of individuals.

Obviously, this real concern is that the broad policy issues in intelligence activities whose details need and review by those with responsibility availability and activities.

The select committee believes as to require very close protection and intelligence activities. Publication of information would be of national peril. At the same time, policy made by the Congress would risk being faulty and to resolve these conflicting needs, participation in policy making by the whole Congress.

The select committee had in mind the House of Representatives, information available to every Member, practical application of such a principle and that this application of the issues involved were discussed. The primary reasons for problems are that the institution has never in fact is that if the highest official interpret, and control sensitive with Congress will lead to its being it available, even when committed such information.

There is also another specification between these independent branches of the greatest importance requiring continued secrecy, either because they conflict with or reflect events in some fashion agencies. Finally, there are in

Protection of National Defense Secrets and Intelligence

It is worth noting that some members of the select committee were especially concerned about the inherent problems of protecting some unusually sensitive kinds of national security information, such as those related to our own new technology, and to intelligence collection, special sources, codes, and identities of agents. Some such matters are under special safeguards of law and executive orders. This expressed concern did not relate to whether one committee was a better protector of sensitive information than another; rather, it was related to a belief that secrets are more likely to remain secret if they are exposed to the smallest possible number of individuals.

Obviously, this real concern clashes with another legitimate concern that the broad policy issues involved in new technology and in intelligence activities whose details now are closely held require consideration and review by those with responsibility for policies affected by their availability and activities.

The select committee believes the dangers of the real world are such as to require very close protection of some classes of defense secrets and intelligence activities. Public disclosure of certain of these items of information would be unwise and harmful even to the point of national peril. At the same time, the committee believes that national policy made by the Congress without the best information available would risk being faulty and even dangerous. The question of how to resolve these conflicting needs for closely held secrets and responsible participation in policy making is deserving of serious study by the whole Congress.

The select committee had no desire to change the existing Rules of the House of Representatives, which in principle make all its information available to every Member. The committee recognized that the practical application of such a rule on access is different from the stated principle and that this application can change only to a degree. But as the issues involved were discussed, it became evident that one of the primary reasons for problems on access to information in the House is that the institution has never faced the real issues involved. The hard fact is that if the highest officials of the executive branch who collect, interpret, and control sensitive information believe that sharing it with Congress will lead to its public disclosure, they will not make it available, even when committees go into executive session to receive such information.

There is also another special dilemma of information sharing between these independent branches of Government: While most classified matters of the greatest sensitivity are mutually agreed upon as requiring continued secrecy, a few crucial issues have been classified either because they conflict with the policies put forth by the President, or reflect events in some fashion embarrassing to executive branch agencies. Finally, there are matters legitimately considered secret by

both branches, but where changed circumstances of public policy require some extraordinary move to declassify, possibly over the objections of one branch.

A Proposal To Meet Problems of National Security Information

The select committee discussed whether to mandate new rules and their application in the reported House resolution, or whether merely to include a study of the problem in the appendix to this report. Its decision has been to take a middle ground. Because actual changes in the rules will require more study and debate than the present occasion makes available, and because the matter is simply too important to relegate to an appendix, the select committee includes these recommendations on access to and handling of classified information in the report itself.

The select committee strongly suggests that the House must take the initiative to create an orderly set of rules which govern the receipt, use, storage, and dissemination of national security information and intelligence. These rules should be designed in such a way as to give the same quality of protection as is afforded by the executive branch, but not to tie the hands of the House when overriding considerations of national policy require a change from the restrictions imposed on such information by its originators in the executive branch of Government. These exceptions will require the most careful consideration if the House is to receive sensitive information. As further thought will reveal, the issues are complex, and no abstract set of rules may cover every possible contingency in an unknown future.

To facilitate action by the House, the select committee recommends study of the draft language which follows this paragraph. Members of the select committee did not vote to approve this language as a concrete recommendation for enactment, or it would have been a part of the reported resolution. But it did reach a consensus that the language presented here would be a useful step in translating discussion from generalities to a number of specific issues, and hence it is offered to the House for serious consideration.

In clause 3 of Rule X, add the following new paragraph:

"() (1) The Committee on Armed Services [, and] the Committee on Appropriations [, and] the Committee on Foreign Affairs shall each have a subcommittee on intelligence consisting of members appointed (without regard to seniority) by the Speaker with the concurrence of the chairman of the committee. Such subcommittees may meet separately on matters within the jurisdiction of their respective committees, or jointly on matters which are of common concern or affect the House generally.

"(2) The two [three] subcommittees meeting jointly shall constitute the special committee on intelligence, and as such shall have responsibility for (A) preparing and maintaining a manual to govern the protection of classified national security information, including

the provision of secure storage of personal clearance procedures and individual Members, (B) be required to implement this with executive branch agencies of employees needing clearance from branch agencies for field work providing for the effective conduct of procedures relating to the House under clause 5.

Insert in Rule X the following succeeding clause accordingly

"Handling of

"5. (a) All information received by any committee or Member or higher as a national security matter deemed to have been received subject to all of the rules on the disclosure of activities of the executive session. No such information other than a Member have been properly cleared information or data in the present

"(b) Any Member or employee or data shall be notified of its disclosure. If in the judgment or data there is special sensitivity the information otherwise than participation) the Member acknowledge that he is restrictions on disclosure.

"(c) Each Member or employee of classified national security information a security manual governing copies of applicable statute penalties for unauthorized clearance standards and procedures the same standards of protection branch) shall be prepared and concurred in by the Speaker

"(d) House employees (and staffs of Members), before releasing national security information of investigation and certification sensitivity involved, follow the branch.

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the provision of secure storage and the establishment of appropriate personal clearance procedures for staff employees of both committees and individual Members, (B) maintaining such central records as may be required to implement this paragraph, (C) maintaining such liaison with executive branch agencies as will expedite the orderly investigation of employees needing clearance, and contracting with executive branch agencies for field work and searches of files, and (D) otherwise providing for the effective conduct and administration of activities and procedures relating to the handling of classified information in the House under clause 5.

Insert in Rule X the following new clause (and renumber the succeeding clause accordingly):

"Handling of Classified Information

"5. (a) All information and data whether written or oral received by any committee or Member of the House which is classified Secret or higher as a national security matter by the originator shall be deemed to have been received in executive session, and shall be subject to all of the rules and procedures of the House which restrict the disclosure of activities conducted and matters presented in executive session. No such information or data shall be disclosed to any person other than a Member, except to those House employees who have been properly cleared and can demonstrate a need to have such information or data in the performance of their official duties as such.

"(b) Any Member or employee receiving such classified information or data shall be notified of its classification and the restrictions on its disclosure. If in the judgment of the person providing the information or data there is special sensitivity (or in the case of a Member receiving the information otherwise than in the normal course of his committee participation) the Member or employee may be required to sign an acknowledgement that he or she understands and will abide by the restrictions on disclosure.

"(c) Each Member or employee who receives or may receive classified national security information or data shall be provided with a security manual governing its use and protection, together with copies of applicable statutes on the protection of official secrets and penalties for unauthorized disclosure thereof. Such manual and the clearance standards and procedures for the House (which shall meet the same standards of protection as those applied in the executive branch) shall be prepared by the special committee on intelligence and concurred in by the Speaker and the minority leader.

"(d) House employees (whether on committee staffs or on personal staffs of Members), before they may receive or be exposed to classified national security information or data, must be cleared by a process of investigation and certification which is appropriate to the level of sensitivity involved, following the criteria which apply in the executive branch.

"(c)(1) When a Member receives classified national security information or data otherwise than in the course of his or her committee activities, and believes it is over- or under-classified, he or she may request of the special committee on intelligence that such information or data (in the House) be declassified, or reclassified at another level, as appropriate.

"(2) When a Member receives classified national security information or data in the course of his or her committee activities, and believes it is over- or under-classified, he or she may request consideration of a change in classification by the committee. If the committee by majority vote agrees to the change, it may request such change of the special committee on intelligence.

"(3) The special committee on intelligence, if it agrees with any change requested under subparagraph (1) or (2), shall report its agreement with such change to the Speaker and the minority leader, and if they concur, the change shall automatically be made. If the decision of the special committee or of the leadership is adverse to such change, an appeal may be taken to the floor, in closed door session, at the direction of a majority of any committee.

"(4) Prior to any action by a Member or committee or the special committee on intelligence with respect to the reclassification of any information or data under this subparagraph, such reclassification shall be requested of the originator of the information or data, with a response requested within a period of seven legislative days. Such action shall not be taken prior to the conclusion of such period except in case of an emergency requiring immediate consideration by the House.

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